appeal submitted pursuant to paragraphs (1) and (3) - (7) of subdivision (a) of this Subpart within one year of the aforementioned 120-day period or the receipt of such applications, whichever date is later. In the event the Department requests additional documentation, the one year time limit shall be extended for a mutually agreed upon time period for receipt of the documentation established by the Commissioner in conjunction with the residential health care facility. The deadline will be set according to the nature and quantity of documentation necessary. The one-year time limit shall not apply to rate appeals submitted pursuant to section 86-2.13(b) of this Subpart.

(1) The affirmation or revision of the rate upon such staff review shall be final, unless within 30 days of its receipt a hearing is requested, by registered or certified mail, before a Rate Review Officer on forms supplied by the Department. The request shall contain a statement of factual issues to be resolved. The facility may submit memoranda on legal issues which it deems relevant to the appeal.

(2) Where the Rate Review Officer determines that there is no factual issue, the request for a hearing shall be denied and the facility notified of such determination. The Rate Review Officer, where he determines that there is factual issue, shall issue a notice of hearing establishing the date, time and place of the hearing and setting forth the factual issues as determined by such Officer. The hearing shall be held in conformity with the provisions of the Public Health Law section 12-a and the State Administrative Procedure Act.

(3) The recommendation of the rate Review Officer shall be submitted to the commissioner of Health for final approval or disapproval and recertification of the rate where appropriate.

(4) The procedure set forth in this subdivision shall apply to all applications for rate reviews which are pending as of April 1, 1978. Rate appeals filed prior to April 1, 1978, will not be required to be resubmitted subsequent to April 1, 1978.

(c) Any modified rate certified under paragraph (3) and (4) of subdivision (a) of this section shall be effective on the first day of the month in which the respective change is operational.

(d) In reviewing appeals for revisions to certified rates the commissioner may refuse to accept or consider an appeal from a residential health care facility:

(1) providing an unacceptable level of care as determined after review by the State Hospital Review and Planning Council;

(2) operated by the same management when it is determined by the department that this management is providing an unacceptable level of care as determined after review by the State Hospital Review and Planning Council in one of its facilities;

(3) where it has been determined by the commissioner that the operation is being conducted by a person or persons not properly established in accordance with the Public Health Law;

(4) where a fine or penalty has been imposed on the facility and such fine or penalty has not been paid.

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In such instances the provisions of subdivision (c) of this section shall not be effective until the date the appeal is accepted by the commissioner.

(e) Any residential health care facility determined after review by the State Hospital Review and Planning Council to be providing an unacceptable level of care shall have its current reimbursement rate reduced by 10 percent as of the first day of the month following 30 days after the date of the determination. This rate reduction shall remain in effect for a one-month period or until the first day of the month following 30 days after a determination that the level of care has been improved to an acceptable level, whichever is longer. Such reductions shall be in addition to any revision of rates based on audit exceptions.

(f) Reserved.

86-4
supersedes
82-30

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86-2.15 Rates for residential health care facilities without adequate cost experience.

(a)(1) This subdivision shall apply where the fiscal and statistical data of the facility are unavailable through no fault of the provider or its agents, and due to circumstances beyond its control. or when there is a new facility without adequate cost experience as set forth in subdivision (e) of section 86-2.2 of this Subpart.

(2) The appointment of a receiver or the establishment of a new operator for an ongoing facility shall not be considered a new facility for the purposes of this section. Reimbursement for such receiver or new operator shall be in accordance with sections 86-2.10 and 86-2.11 of this Subpart.

(b) The rates certified for such residential health care facilities as set forth in subdivision (a) of this section, shall be determined in accordance with the following:

(1) Except as identified in paragraph (5) (6) and (7) of this subdivision, for the first three months of operation, the direct component of the rate shall be equivalent to the statewide [base] mean direct case mix neutral cost per day after application of the RDIPAF as determined pursuant to section 86-2.10 of this Subpart. The facility shall perform an assessment of all patients, pursuant to section 86-2.30 of this Subpart, at the beginning of the fourth month of operation and at the beginning of each third

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month thereafter until the end of the [six-month] twelve-month cost report period referred to in section 86-2.2(e) of this Subpart or if applicable, the six-month cost report identified in subdivision (e) of this section. The direct component of the rate shall be adjusted pursuant to section 86-2.10 of this Subpart, effective the first day of the month of each assessment period, based on the facility's case mix.

(2) Except as identified in paragraph (5), (6) and (7) of this subdivision, for the first three months of operation, the indirect component of the rate shall be equivalent to a blended [base] mean price for the applicable affiliation group as identified in subdivision (d) of section 86-2.10 of this Subpart. The blended [base] mean price shall be established using a proportion of 60 residents in the high case mix index peer group and 40 residents in the low case mix index peer group both as identified in subdivision (d) of 86-2.10 of this Subpart, adjusted by the RIIPAF. Effective on the first day of the fourth month the indirect component shall be the [base] mean price determined using the facility's PRI's and adjusted by the RIIPAF.

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(3) the non-comparable component of the rate shall be determined on the basis of generally applicable factors, including but not limited to the following:

(i) satisfactory cost projections;

(ii) allowable actual expenditures;

(iii) an anticipated average utilization of no less than 90 percent.

(4) Rates established pursuant to this subdivision shall also include an adjustment pursuant to subdivision (u) of section 86-2.10 of this Subpart.

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(5) Acquired Immune Deficiency Syndrome (AIDS). Except as identified in subparagraph (v) of this paragraph, a facility which is approved as a distinct AIDS facility or has a discrete AIDS unit pursuant to Part 710 of this Title, shall have rates established pursuant to this subdivision as follows:

(i) The direct component of the rate shall be determined in accordance with paragraph (1) of this subdivision provided, however, that the direct [base] mean [price] rate for the first three months of operation shall be determined pursuant to an approved facility's projection of case mix. The direct component of the rate shall be enhanced by an increment which shall be determined on the basis of the difference between budgeted costs of care and staffing levels for AIDS patients in specific patient classification groups and the costs of care and staffing levels for non-AIDS patients which are classified in the same patient classification groups based on data submitted by a facility. The increment to be included in the facility's rate pursuant to this subparagraph shall be approved by the commissioner, but in no event shall the increment be greater than 1.0. The direct component of the rate shall also be increased by an occupancy factor of 1.225.

(ii) The indirect component shall be determined in accordance with paragraph (2) of this subdivision provided however, that the indirect [base] mean price for the first three months of operation shall be determined pursuant to an approved facility's projection of case mix. The indirect component of the rate shall be increased by the AIDS factor as determined pursuant to section 86-2.10(p) of this Subpart.

(iii) The allowable costs for the central service supply functional cost center as listed in paragraph (1) of section 86-2.10(c) shall be considered as a non-comparable cost.

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(iv) Rates developed pursuant to this paragraph shall remain in effect until a facility submits twelve-month financial and statistical data pursuant to subdivision (e) of section 86-2.2 of this Subpart.

(v) Notwithstanding the provisions of subparagraph (i), (ii) and (iii) of this paragraph, any facility which prior to April 1, 1991 has a rate approved and certified by the commissioner pursuant to section 2807 of the Public Health Law, which includes AIDS specific adjustments pursuant to this Subpart, or has been approved as an AIDS specific facility by the Public Health Council, and/or has had a certificate of need application approved or conditionally approved pursuant to Part 710 of this Title for the operation of a discrete AIDS unit shall have its rate determined in accordance with the following:

(a) The direct component of the rate shall be based on the statewide ceiling direct case mix neutral cost per day after application of the RDIPAF as determined pursuant to section 86-2.10 of this Subpart and a case mix proxy for AIDS patients established by the subparagraph, and increased by an occupancy factor of 1.225. The case mix proxy for AIDS patients shall be determined as follows:

(1) A facility which was approved based on a written application for establishment and/or construction which indicated that a majority of its AIDS patients would fall into patient classification groups with a case mix index exceeding 0.83 prior to application of any AIDS factors or increments identified in this subdivision shall be assigned a case mix proxy as determined by the following:

(i) For its first three months of operation, the facility shall be assigned a case mix proxy of 2.32.

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Withdrawn

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(ii) The indirect component of the rate for facilities identified in subclause (2) of this clause shall be equivalent to the ceiling indirect price per day of the low intensity peer group established pursuant to paragraph (2) of subdivision (d) of section 86-2.10 of this Subpart after application of the RIIPAF as determined pursuant to section 86-2.10 of this Subpart and increased by the indirect AIDS factor as determined pursuant to subdivision (p) of section 86-2.10 of this Subpart.

(4) For purposes of this subparagraph, the allowable costs for the central service supply functional cost center as listed in paragraph (1) of section 86-2.10(c) shall be considered a non-comparable cost.

(5) Rates developed pursuant to this subparagraph shall remain in effect until a facility submits financial and statistical data pursuant to section 86-2.2(e) of this Subpart[, but for a period not to exceed 18 months from the effective date of such rate, or April 1, 1991 whichever is later. If a rate pursuant to subdivision (e) of section 86-2.2 of this Subpart cannot be established within this 18 month period, a facility shall have the operational component of its rate determined pursuant to subparagraphs (i), (ii), and (iii) of this paragraph which will be effective on the first day of the month following the 18 month period referenced in this subclause].